IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.6325 of 2004

Mrs Malti R Karotia and anr ..Petitioners
vs
The State of Mah and ors...Respondents

Mr A Y Sakhare Sr Advocate with Smt Anupama Shah for A.V.Anturkar for petitioners

Mr. V.A.Thorat Advocate General with Mr R.D.Rane AGP for respondent no.l State

Mr. Vijay Patil for respondent no.3

Mr Nitin Jamdar for respondent no. 4

CORAM: A.P.SHAH & S.C.DHARMADHIKARI JJ.

Dated l3.l2.2004

P.C:

Heard advocates.

2. This petition has been filed by two Mayors. The lst petitioner is the Mayor of Ulhasnagar Municipal Corporation whereas the second petitioner is the Mayor of Bhiwandi Nizampur Municipal Corporation. Both the Municipal Corporations are constituted under the provisions of the Bombay Provincial Municipal Corporation Act, l940,hereinafter referred to as "the Act". By this petition, petitioners are seeking a declaration that section l9(l) of the Act as amended by the Maharashtra Act XXV of 2000 is ultravires,

unconstitutional and void ab-initio and that the tenure of the Mayor shall be co-terminous with the tenure of the Municipal Corporation i.e. 5 years in view of the provisions of Part IX and Part IXA of the Constitution of India.

3. Section l9 of the Act provides that a Mayor and Dy Mayor shall be elected from amongst sitting Councillors and the tenure of the post of Mayor and Dy Mayor shall be 2 and half years. Initially the tenure of the Mayor and Dy Mayor was one year which was increased by the Legislature upto 2 and half years by Maharashtra Act XXV of 2003 with effect from l9.4.2000. The tenure of both the petitioners has already expired and fresh elections are due to the post of Mayor and Dy Mayor in both the Corporations in accordance with the provisions of section l9 of the Act.

4. Mr. Sakhare, learned counsel appearing for the petitioners submitted that the Mayor being the Chairperson of the Municipal Corporation is entitled to have the same tenure which is ensured by virtue of Article 243U of the Constitution in respect of Municipalities. According to him therefore the provisions of section l9 are in violation of Article 243U of the Constitution. In

the alternative Shri Sakhare submitted that under Part IXA of the Constitution, the State Legislature is empowered to enact law providing for the manner of election of Chair person of a Municipality i.e. "Mayor" in case of Corporation but not to prescribe the tenure of office. Therefore section l9 is liable to be struck down for want of legislative competence.

5. We are unable to accept the submissions of Mr. Sakhare. Part IXA of the Constitution requires the State to regulate or enact laws for constitution and governance of local bodies. The provisions are mainly enabling and require the Legislature to legislate upon certain matters provided therein. It is left to the wisdom of the Legislature to make laws in relation to the tenure of the office bearers of the local bodies. The Constitution provided for the tenure of the local body but does not provide for tenure of the office bearers of local bodies. In the circumstances section l9 which prescribes tenure of Mayor and Dy Mayor cannot be said to be violative of Part IXA of the Constitution. The power to legislate flows from Article 246 and Entries in Schedule VII are heads of power. Entry V of List II empowers State Legislature to pass enactments regarding local

governments i.e. to say constitution and powers of a Municipal Corporation. Accordingly, initially the tenure of a Mayor of a Municipal Corporation was fixed as one year and later on it has been altered to 2 and half years. Therefore the argument that the Legislature has no competence to provide for period of office bearers is thoroughly misconceived and must be rejected.

6. Mr.Sakhare in support of his submission relied upon a unreported decision of the Patna High Court in Bihar Mayor Council vs The Union of India and ors (C.W.J.C. No.l0l9 of 2003 decided on 4.9.2003). In that case State of Bihar failed to make necessary amendment in the Municipal Laws consequent upon 73rd and 74th Amendments to the Constitution and the Mayor's post was not even defined in the Patna Municipal Corporation Act, l95l. The Division Bench noted that the Mayor's tenure was only one year whereas the tenure of the Chief Executive Officer of the Corporation was 5 years or more. The Division Bench held that the Mayor as a Chairperson to the elected body is democratically superior to Chief Executive Officer who is a civil servant in civic body. Mayor therefore cannot be put in the position of subjugation with weak one year's tenure.

Consequently the tenure of Mayor and Dy Mayor cannot be less than the tenure of Chief Executive Officer. In our opinion the decision of the Patna High Court is clearly distinguishable and has no relevance as far as the provision of Bombay Provincial Municipal Corporation Act is concerned.

In view of the foregoing discussion, petition is dismissed.